UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

16 AUG 2002

Roger Randolph, Director
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Subject: EPA Finding that the title V Permit for Doe Run Buick Mine and Mill must be Reopened for Cause

Dear Mr. Randolph:

On October 4, 2000, EPA Region 7 received a petition from the Sierra Club Ozark Chapter asking the EPA Administrator to perform an independent review of the final title V permit issued by MDNR to Doe Run Buick Mine and Mill. Sierra Club raised a number of questions about the enforceability of the Doe Run permit and other concerns about the completeness of the permit record, focusing primarily on the Statement of Basis document.

On July 31, 2002, the Administrator issued an order granting in part and denying in part the Sierra Club petition. Specifically, the Administrator found that the permit did not provide periodic monitoring for certain equipment operated by the permittee. Because a final permit has been issued, EPA is required by 40 C.F.R. §70.8(d) to reopen the permit consistent with the procedures in §§70.7(g)(4) or (5)(i) and (ii).

In addition, as a consequence of our detailed review of the title V permit, we have identified an issue, not specifically raised by the Sierra Club, which requires correction of the permit. This issue relates to the portion of the permit dealing with certain asbestos-related requirements which are not enforceable under the Clean Air Act. EPA is also reopening the permit with respect to this issue.

Finally, our review of the permit has identified other issues which require further evaluation. We are requesting that you reevaluate your application of the process weight rate and opacity rules to emissions units located in the underground mine. If warranted by the results of this re-evaluation, we will call for the permit to be reopened for cause to correct these conditions as well.

On December 6, 2000, Jon Knodel, Air Permitting and Compliance Branch, discussed the major reopening issues with your staff. The reopening issues, as well as additional recommendations for your consideration, are described in greater detail in the enclosed document.

As a consequence of this reopening for cause action, MDNR is required to reopen the Title V permit according to the procedures in 40 CFR §§70.7(f) and (g) and 10 CSR 10-6.065(F)1.D. MDNR must provide EPA with a proposed permit that includes the modifications listed in section I of our enclosure within 90 days from the date that you receive this letter. You may ask for an extension to request new information from Doe Run, which EPA may grant if we determine that the extension is necessary See 40 CFR §70.7(g)(2). Because the deadline for reopening a Title V permit will arrive very quickly, we recommend that MDNR begin this process immediately. The reopening process must include an opportunity for all interested parties, including Doe Run, Sierra Club, and other members of the public to comment on the draft revised permit.

If MDNR does not reopen the permit as required by EPA and Missouri regulations, EPA will be required under 40 CFR §70.7(g)(5) to terminate, modify, or revoke and revise the permit. We appreciate your cooperation in this process and, as we have promised, we will continue to assist you as you reopen the permit. If you have any questions about our letter or the reopening process, please call me or have your staff contact Harriett Jones at (913) 551-7730.

Sincerely,

for William A. Spratlin
Director
Air, RCRA, and Toxics Division

Enclosure

cc: Randy Raymond
Missouri Department of Natural Resources

Wallace McMullen
Sierra Club Ozark Chapter

Denis Murphy
Doe Run Buick Mine and Mill

I. SIGNIFICANT ISSUES THAT MUST BE CORRECTED OR MORE FULLY EXPLAINED IN THE DOE RUN BUICK MINE AND MILL TITLE V PERMIT REOPENING

1. Manufacturer's specifications not adequate for periodic monitoring.

Sierra Club expressed concern about MDNR's generic use of "manufacturer's specifications" as the periodic monitoring method for certain baghouse equipment installed on underground cement batch plant silos. Sierra Club contends that the permit condition does not include explicit instructions on what the permittee must do and since manufacturer's specifications are frequently difficult to obtain, that they should be incorporated into the title V permit.

As an example, Condition EU0040 summarizes the applicable requirements for Concrete Batch Plant #2. Under the monitoring provisions in EU0040-001, the permit authority requires Doe Run to operate and maintain the cement and fly ash silo baghouse "in accordance with manufacturer's specifications." In addition, Doe Run must maintain an on-site inventory of replacement bags and an operating and maintenance log noting, in part, all malfunctions and maintenance activities performed on the baghouse. These monitoring requirements are adopted into the title V permit, verbatim, from the preconstruction permit.

In its Response to Comments document, addressing the same comment raised by Sierra Club during the public review period for the draft title V permit, MDNR simply replies that the manufacturer's specifications provision is only "one of four monitoring requirements and is commonly applied language in permits referring to baghouses, paint booths, and solvent cleaners." Despite this explanation, Sierra Club chose to raise this issue in the petition to the Administrator, suggesting that the manufacturer's specifications clause represents a major loophole in determining compliance with an applicable requirements.

EPA agrees with Sierra Club that manufacturer's specifications alone, are not sufficient periodic monitoring to assure that a baghouse is properly maintained and operated. Most manufacturer's specifications are intended to be general guidelines and are frequently updated to improve operator and equipment performance over time. While certain key elements from the specifications document could serve as the basis for useful periodic monitoring, EPA does not recommend that the specification manual itself be incorporated by reference into a title V permit. Frequent revisions to the specification documents could trigger many unnecessary permit reopenings to adopt the latest changes. In general, such an approach would not be practical given the large number of title V permits that would continuously be undergoing permit revisions.

Sections A.10, A.12, and A.13 in EPA's Compliance Assurance Monitoring (CAM) Technical Reference Document[1] provide several examples of monitoring techniques that can be used to assure that a baghouse continues to operate at optimal performance. Each of these techniques require some direct measurement of baghouse performance, using pressure drop, broken bag detection, or fan amperage, along with a visible emissions assessment to assure that the equipment is maintained and repaired at the first sign of trouble. While the CAM requirements are not applicable to the Doe Run permit until permit renewal or until the title V permit application is modified, these examples clearly indicate that additional monitoring will be necessary in the future. Since continuing optimum baghouse performance is integral to protection of the 15 tons per year (tpy) PM_{10} limitation, the permit should contain more explicit monitoring requirements, such as those described in the CAM examples, to assure proper operation and maintenance of the baghouse.

This equipment is governed, in part, by the state's pre-construction permit, which limits the total emissions of PM_{10} from this and several pieces of equipment to less than 15 tpy. The assumptions used to make the PM_{10} mass balance compliance calculation rely heavily on the 99% control efficiency of the silo baghouse and the 50% particulate fall-out rate estimated for the mine. Absent controls on the silo, it would be highly unlikely that Doe Run would be able to demonstrate compliance with the 15 tpy PM_{10} restriction. In fact, based on the uncontrolled emission calculations shown in the Statement of Basis, uncontrolled PM_{10} emissions could be as high as 118 tpy from the fly ash silo, well in excess of the permitted limit. Therefore, it is necessary for the title V permit to establish reasonable periodic monitoring to assure that the baghouse continues to operate at a performance level at or above the assumptions used in the original permit.

The threshold question then is whether the existing monitoring requirements incorporated from the pre-construction permit constitute adequate periodic monitoring for the emission limitations associated with the fly ash silo and controls. In a recent ruling by the EPA on a title V petition[2], the Administrator concluded that despite the presence of an

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1 See. Compliance Assurance Monitoring Technical Reference Document, Appendix A, http://www.epa.gov/ttn/emc/cam/ap-a8-15.pdf

2 See. Order Responding to Wyoming Outdoor Council's Request that the Administrator Object to Two PacificCorp Permits, http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/woc020.pdf

underlying monitoring requirement, 40 CFR § 70.6(c)(1) requires an independent analysis to assure that the monitoring in the title V permit is adequate to assure compliance. By its terms, § 70.6(c)(1), like the statutory provisions it implements, calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit.

Maintaining a ready-supply of replacement bags and an operating and maintenance log noting, in part, all malfunctions and maintenance activities performed on the baghouse are prudent activities. However, these activities, taken alone or together, do not compel Doe Run to replace the bags at regular intervals or when a bag breaks. Further, manufacturer's specifications, while important, are not enforceable commitments unless certain key elements are placed in the title V permit. In addition to the baghouse-related requirements already contained in the title V permit, EPA recommends that MDNR require installation (or use of any existing monitoring equipment), operation, and maintenance of baghouse monitoring equipment, such as broken bag detectors, pressure drop indicators, fan amperage meters, or other procedures to document continuing baghouse performance. Other monitoring, in conjunction with the specified operation and maintenance plan may also be acceptable. We encourage the department to work with Doe Run to devise a monitoring plan that assures that baghouse repairs will be undertaken in a timely fashion to minimize emissions and to assure compliance with the PM_{10} emissions limitation. For the reasons stated above, EPA finds cause to reopen the permit pursuant to 40 CFR § 70.7(f).

2. **Clarification of TSCA-related asbestos requirements as "state only."**

Conditions PW002 in the final title V permit includes the requirements outlined in 10 CSR 10-6.250 for Asbestos Abatement Projects - Certification, Accreditation, and Business Exemptions. Since these TSCA-related [Toxic Substances Control Act] asbestos requirements do not derive from the Clean Air Act they should be clearly identified as "state only enforceable." Therefore, pursuant to 40 CFR §§ 70.7 (f) and (g) and § 70.8(d), EPA finds cause to reopen the permit.

[END OF SIGNIFICANT ISSUES REQUIRING REVISIONS]

II. SIGNIFICANT ISSUES THAT MUST BE FURTHER EVALUATED TO DETERMINE WHETHER CAUSE FOR REOPENING EXISTS

1. Applicability of Opacity and Process Weight Rate (PWR) Rule to Underground Equipment.

Operation of the portable cement plants, along with certain crushers, conveyors, and mining activities occur underground. While many of the individual pieces of underground equipment have the potential to emit air contaminants, the emissions are not directly released to the atmosphere. Instead, emissions from the underground equipment are released into the general mine air space. Large volumes of fresh ambient air are continuously pumped into the mine to reduce ambient concentrations of particulate and other noxious emissions in the mine. To further reduce pollutant concentrations, some of the underground emissions are ducted through control devices. MDNR estimates that, eventually, 10 % of the emissions released underground make it to the atmosphere through a series of mine shaft ventilation exhaust ducts.

The following discussion raises several questions about how the opacity and PWR rules should be applied to this unusual situation. To help resolve any confusion that we and others may have, we ask MDNR to evaluate our comments and determine what permit revisions may be necessary to properly implement the PWR and opacity requirements for the underground equipment. To the extent MDNR has a different approach for applying its rules in these types of situations, we ask the department to clarify in the Statement of Basis or to provide other documentation (*e.g.*, an existing policy or guidance document describing how to apply PWR and opacity requirements to fully enclosed equipment) to the permit record.

a. Process Weight Rate

(i) ***Applicability***. Normally, emissions from mining operations, such as drilling, blasting, and hauling would be considered fugitive if located above ground. Typically, these types of emissions can not be reasonably anticipated to pass through a stack, chimney, vent, or other functionally equivalent opening. However, in this case, emissions from drilling, blasting, and hauling co-mingle with other underground fugitive and point source mine operations and are ducted to the atmosphere through a common ventilator system. This means that for the purpose of selecting the appropriate particulate standard, all underground emissions should be considered as non-fugitive and therefore subject to the point source rules.

Typically, the PWR rule is applied to an individual point source, or group of sources that emits particulate matter, through a stack or duct, directly to the atmosphere.

In keeping with this point source approach, it appears that the title V permit establishes a PWR mass-rate limit for certain pieces of underground equipment with control equipment that duct their emissions through a stack or duct. See. Condition EU0040-002, along with Conditions EU0030-001 and EU00060-001. However, given the unique circumstances in this case, we question whether the PWR mass-rate approach outlined in the permit has been properly applied to the underground emissions.

It appears that the "true" emission points for the underground operations should be the mine ventilation shafts where emissions enter the atmosphere. The mining operations at Doe Run are analogous to a situation where equipment that is fully enclosed in a building emits only through a common roof vent or fan-assisted ventilation louver. In the case of an enclosed building, the particulate and opacity standards are generally applied at the point of entry to the atmosphere, not to the individual equipment located in the building. We believe that the Doe Run title V permit should be revised to include the mine ventilation shafts as the appropriate place to apply the PWR rule for all underground equipment.

(ii) ***Fixed or Variable PWR?*** At the time the final title V permit was issued in August 2000, 10 CSR 10-3.080, "Restrictions of Emission of Visible Air Contaminants," had already been rescinded, effective May 30, 2000. However, at that time it remained in the approved State Implementation Plan (SIP) and was, therefore, an applicable requirement and federally enforceable, though not enforceable by the state. The state regulation that replaced 10 CSR 10-3.080, 10- CSR 10-6.220, had not yet been included in the SIP and though in effect and enforceable by the state, was not yet enforceable federally. Since that time, 10 CSR 10-3.080 has been removed from the SIP and 10 CSR 10-6.220 has been added. Therefore, the revised permit should reference 10 CSR 10-6.220 which is enforceable both federally and by the state.

In the final title V permit, the department bases the PWR mass-rates on the maximum hourly design rate of the various equipment and then, using the PWR algorithm or Table I in 10 CSR 10-3.050(4)(A), incorporates the corresponding particulate matter limit into the permit. EPA's understanding, however, is that PWR limits are intended to be variable based on the actual equipment operating rate or exhaust rate recorded during a particulate compliance test. Accordingly, the PWR limit can vary from test to test and should be established case-by-case using the interpolation table and equations found formerly in 10 CSR 10-3.050(4)(A) and currently in 10 CSR 10-6.400. By following the maximum design rate approach found in the Doe Run title V permit, a source could potentially be given a higher mass rate limit than would be otherwise allowed by the rule.

As an example, if a source has a maximum design rate of 20,000 lbs/hr, its corresponding table PWR limit would be 19.2 lbs PM/hr. However, if during a

performance test the source is only operating at 80 % of its design rate, we believe the appropriate limit during testing would be 16.5 lbs PM/hr, based on an actual process rate of 16,000 lbs/hr. By using the approach outlined in the Doe Run permit, a source could potentially power down its control equipment to demonstrate compliance with the higher PWR limit. Once demonstrated, a source could potentially continue to operate the control equipment in a reduced power mode and potentially not meet the PWR limit at higher production rates. To protect against such an occurrence, we believe that the PWR limit should be applied at the time of a compliance test, at the actual process operating rate. Therefore, it seems more appropriate to include the generic interpolation equation found in 10 CSR 10-6.400 or a reference to the PWR table (Table I), as the methodology for determining what limit applies at the time of any testing. This ensures that if equipment is operating at lower-than-maximum operating or exhaust rates that the lower limits will apply.

In either case, we request that MDNR clarify, in the Statement of Basis or by inclusion of any state PWR-related policy or guidance document in the permit record, whether limitations established under the PWR rule should be based on maximum design rate or the equipment operating rate at the time of a compliance test. We also recommend that if the EPA interpretation prevails that the title V permit be revised accordingly.

(iii) ***Mass or Concentration Rate?*** The permit appears not to offer the use of the alternate PWR concentration-based standard, formerly found in 10 CSR 10-3.050(4)(A) Table I., which may be used if particulate testing indicates that the mass rate limit is more stringent than the concentration standard. For example, if the source finds that it is in compliance with the appropriate concentration standard, based on the exhaust volume of the test stream, but can not meet the corresponding mass rate from the PWR table or interpolation equation, then it is nevertheless deemed in compliance with the PWR requirements. EPA believes that Doe Run should be afforded the opportunity to use the concentration-based PWR limits to the extent allowed by the rule, and that the permit should be revised accordingly.

(iv) ***Periodic Monitoring for Underground Equipment***. With respect to periodic monitoring for equipment subject to the PWR rule, MDNR determined that if certain underground equipment could be shown to meet the PWR mass rate limit, in the absence of controls, then no further periodic monitoring was necessary. However, since it appears that all underground equipment must be evaluated to set a mine-wide PWR limit, the single source approach to periodic monitoring is no longer appropriate. In its reconsideration of how to apply the PWR requirements to the mine equipment, we encourage the department to specify the procedures used to verify compliance with all underground equipment. Ideally, this procedure should be incorporated as the periodic monitoring methodology in the title V permit. For example, the procedures should document: 1) how to determine the aggregate PWR rate for the collection of underground equipment; 2) how any compliance testing is to be conducted; and 3) what periodic assessments must be performed to assure that the emissions remain below the

aggregate PWR rate. If a defensible justification can be made that no periodic monitoring is necessary, then it should be documented in the Statement of Basis.

b. **Opacity**

Condition PW004, governing plant-wide opacity requirements, could be interpreted to apply to the underground equipment since the equipment is not otherwise excluded by the rule, nor excepted from the rule by the permit. However, it is clear that the Method 9 and Method 22 procedures typically used to evaluate opacity or the presence of visible emissions can not be used below ground. Method 9 requires that strict principles on sun position and observer location be met. Contrasting background is also a key consideration. These considerations can not be satisfied for the underground equipment. Further, Method 22 is typically used as an indicator method to determine whether fugitive emissions cross the property line. Since it is unlikely that fugitive underground point source emissions, when mixed with ventilation air, will be visible at the surface, the Method 22 procedures at the actual equipment location do not provide meaningful compliance information. Lastly, even if visible emission techniques could be developed for underground operations, it would require that the public or regulatory inspectors have unobstructed access to enter the mine at any time. While EPA or state inspectors may enter the premises at any reasonable time, taking readings several hundred feet below ground is neither practical nor reliable and is therefore not recommended for these types of installations.

Since the combined emissions from the underground equipment ultimately exhaust to the atmosphere through a series of surface ventilation ducts, EPA believes that compliance with the opacity requirements should be determined at these surface points, rather than at the individual underground point sources. Therefore, MDNR should clarify that Condition PW004 is not intended to be applied directly to the underground equipment and that instead, Doe Run will be required to make periodic observations at the exit of each mine ventilation shaft. With both new and existing equipment located underground, as well as mobile source emissions, the department should fully explain its rationale for selecting the opacity limitation against which compliance will be determined. Based on related EPA guidance describing how to deal with merged emissions streams involving different opacity standards[3], we recommend that MDNR select the lowest opacity limit that applies to any of the equipment (in this case, 20%) and require the source to make periodic observations at the exit of each mine ventilation shaft. In the event the department determines that a higher opacity limit is justifiable, the rationale should be fully explained in the Statement of Basis or other documentation (*e.g.*, an existing policy or guidance document describing how to apply opacity requirements to mixed-applicability exhausts) placed in the permit record.

With regard to periodic monitoring for opacity, the "graduated incentive" observation approach frequently used in the Missouri title V permits, where observations must be taken frequently early on and can be reduced based on a repeated history of no visible emissions, may be appropriate in the Doe Run permit as well, especially if

emissions are anticipated to be well below the opacity limit. Since emissions from the mine can be anticipated to appear wet, depending on ambient conditions, any periodic monitoring procedures should also reference the "uncombined water" exemption formerly in 10 CSR 10-3.080(1)(C) and now in 10-6.220.

[END OF SIGNIFICANT ISSUES FOR RE-EVALUATION]

III. ADDITIONAL RECOMMENDATIONS

The following comments are not required to be addressed as part of the reopening, but offer some suggestions for improving the clarity or enforceability of the permit. We recommend that since MDNR will have to offer the permit for public comment and EPA review, that you consider addressing them prior to public comment.

1. **Use of Emission Factors to Demonstrate Compliance with a PWR Limit.**

As a point of caution, when the PWR limit is the only applicable particulate-related requirement in the title V permit, EPA is concerned with any approach that dismisses periodic or compliance assurance monitoring on the basis that the limit is so high that it can never be exceeded. We believe this approach is further aggravated when the PWR limit is compared to AP-42 or other non source-specific emission factor that may not be representative of actual source operations. AP-42 factors are not meant to be used for compliance purposes unless the published factor is derived directly from test data for the emissions unit in question or other equipment that is identical[3]. Further, unless the AP-42 factor is rated excellent (*e.g.*, "A"), the actual emissions from the equipment could be multiples if not orders of magnitude different than the AP-42 factor. For example, most of the emission factors used to estimate emissions from the portable batch cement plants in the Doe Run permit are rated D and E[4]. Given the uncertainty in these factors, it is probably not appropriate to use them to justify compliance with the PWR rule nor to exempt the equipment from periodic monitoring. In the case of the cement and ash silo, MDNR contends that the unit would be in compliance with the PWR rule even without controls. In the Statement of Basis, MDNR estimates uncontrolled emissions from the silo would be 27 lbs PM/hr compared against a PWR of 35.4 lbs PM/hr. Given the below average "D" rating of the AP-42 factor, there may not be sufficient margin of safety to assure compliance with the PWR limit.

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[3] See. Introduction to AP-42, Volume I, Fifth Edition, January, 1995, http://www.epa.gov/ttn/chief/ap42/c00s00.pdf

[4] D - Below average. Factor is developed from A-, B-, and or C-rated test data from a small number of facilities, and there may be reason to suspect that these facilities do not represent a random sample of the industry. There also may be evidence of variability within the source population.

E - Poor. Factor is developed from C- and D-rated test data, and there may be reason to suspect that the facilities tested do not represent a random sample of the industry. There also may be evidence of variability within the source category population.

To minimize this uncertainty, it may be necessary to require additional source testing to develop a site specific emission factor. If the test factor provides a sufficient margin of safety, then the conclusion by MDNR that no further periodic monitoring is required for the PWR limit may be acceptable. In the alternative, the title V permit should include periodic monitoring to assure that the control equipment is operated in a fashion to assure compliance with the PWR limit. Since we have already concluded in Reopening Comment II. above that additional periodic monitoring is necessary for the silo baghouse to protect the 15 tpy PM10 limit established in Conditions EU-0030 and EU-0040, this will also likely be protective of the PWR limit for these units.

2. **Monitoring Requirements Listed as "None".**

In several of the permit conditions, including EU0010-001, EU0010-002, EU0030-001, and EU0060-001, MDNR has characterized the monitoring requirements as "None." In a couple of cases, this determination is based on an assessment that the equipment, even without operation of controls, would remain below the respective emissions limitations. In the other cases, extensive record keeping and mass-balance accounting procedures serve as the periodic monitoring requirement.

In general, a permitting authority may choose not to require rigorous periodic or compliance assurance monitoring for a particular applicable requirement if the likelihood of non-compliance is minimal and any extra monitoring adds no value. In this case, MDNR makes the argument that the ash silos, even if left uncontrolled, would be able to comply with the state's PWR rule. According to information in the permit record, this is the only rationale provided by the state for its "no monitoring" decision. However, because of other protections afforded by th pre-construction permit and the limitations on PM10 emissions, it is certain in this case that Doe Run, if in compliance with the permit conditions, should remain well below its PWR limit.

At the time MDNR was developing its title V permit template, we applauded the separation of applicable requirements into Emission Limitation, Monitoring, Record keeping, and Reporting sections. Following a similar approach used by EPA in the NSPS program, we felt this separation would lend clarity to the permit. However, we did not anticipate that there might be legitimate reasons why all of these permit blocks may not be filled. While we have concluded that the justifications for "no monitoring" in the Doe Run permit are adequate, it is our opinion that the word "None" needlessly focuses attention on these portions of the permit.

In an effort to refocus the public's attention on substantive issues, we recommend that in those cases where unit specific monitoring is not necessary, or is taken care of

through extensive record keeping, that the department fully explain their decision in the State of Basis. We also recommend that the department discontinue the use of the word "None" and instead merge one or more sections into a single requirement, when appropriate. For example, in the instance where an insensible record keeping requirement is necessary to verify compliance with a mass balance limit, it may be appropriate to merge the Monitoring and Record keeping sections into one permit block called "Monitoring and Record keeping." This calls attention away from blank spaces or the word "None" and in fact clarifies that the record keeping serves as periodic monitoring. In the alternative, a permit statement pointing the reader to another more stringent emission limitation and monitoring requirement might be a more practical and supportable argument than exempting the emission units from monitoring compliance with the PWR rule altogether. We are not requiring any specific changes to the Doe Run permit in this regard, but encourage the department to be mindful of these comments in subsequent permit development.

3. Credible Evidence.

In its original comments on the draft title V permit, Sierra Club suggested that the permit should contain explicit language on the use of credible evidence. The state responded that "it is understood that credible evidence is valid to demonstrate compliance or noncompliance; however, it has not been felt necessary to add a statement to the operating permit at this time. Request denied." At the time this permit was issued, the credible evidence language in 10 CSR 10-6.280 had not yet been approved into the SIP, and was therefore, enforceable only by the state. However, since that time, this regulation has become a part of the approved SIP, and as such is a federally enforceable applicable requirement that should be included in all permits issued. A discussion of this issue was included in EPA's December 5, 2001 letter to MDNR.

4. Applicable Opacity Rule.

The "sunset" provisions in Condition PW004 are unclear. In the final title V permit, Condition PW004 was clarified to show that both 10 CSR 10-6.220 [the new consolidated state opacity rule] and 10 CSR 10-3.080 [the old out-state opacity rule] apply to affected equipment. This is correct. In addition, at the end of Condition PW004, the permit clarifies that 10 CSR 10-6.220 is a state-only rule until approved into the federally-approved state implementation plan (SIP). This is also correct. However, what is not clear is what happens to 10 CSR 10-3.080 once the new consolidated opacity rules is on the federal books. Either the permit, or the Statement of Basis, could benefit from additional explanation that makes clear that once the state's consolidated rule is incorporated into the federally approved SIP, 10 CSR 10-3.080 is obsolete and no longer applicable.

[END OF ADDITIONAL ISSUES]